

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA

Plaintiff,

v.

Criminal Action No.: 5:16–CR–16-1
(JUDGE STAMP)

SHAWN LAMONT MCCLAIN,
a/k/a “GUCCI”,

Defendant.

**REPORT AND RECOMMENDATION THAT DEFENDANT’S MOTION TO DISMISS
BE DENIED AS MOOT AND THE PORTION OF THE COURT’S ORDER SETTING A
MOTION HEARING BE VACATED**

On May 16, 2016, Defendant Shawn Lamont McClain, by counsel, Elgine H. McArdle, Esq., filed a Motion to Dismiss. ECF No. 28. The United States of America (“Government”) filed its Response on May 25, 2016. ECF No. 32. The Court held a hearing on the Motion on May 26, 2016, at which time counsel for Defendant moved the Court to continue the hearing to a later date. ECF No. 35. The Court granted Defendant’s request and continued the hearing. ECF No. 36. On June 6, 2016, Defendant, by counsel, filed a Reply to the Government’s Response. ECF No. 46. After a recitation of the relevant facts and law, Defendant respectfully requested “that his previously filed Motion to Dismiss be withdrawn and that the hearing currently scheduled for [July 8, 2016, at 10:00 a.m.] be vacated.” *Id.* at 4.

Accordingly, the undersigned Recommends that Defendant’s [ECF No. 28] Motion to Dismiss be **DENIED AS MOOT**. Furthermore, because there are no other pending motions in this matter, the undersigned also **RECOMMENDS** that the portion of the District Court’s prior Scheduling Order [ECF No. 42] Setting the Motion Hearing for Friday, July 8, 2016, at 10:00 AM,

be **VACATED**.

Any party who appears *pro se* and any counsel of record, as applicable, may, within fourteen (14) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should be submitted to the District Court Judge of Record.

Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984), *cert. denied*, 467 U.S. 1208 (1984).

Dated: July 6, 2016

/s/ *James E. Seibert*
JAMES E. SEIBERT
U.S. MAGISTRATE JUDGE